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EXAMINER

WILSON, JOHN J

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/720,608
Filing Date: November 24, 2003
Appellant(s): MASSAD, JOSEPH J.

Mark G. Kachigian
HEAD, JOHNSON & KACHIGIAN, P.C.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 19, 2008 appealing from the Office action mailed December 10, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

Appellant filed an After Final Amendment on February 29, 2008, the amendment canceled the non-elected claims 1-5, 7 and 8. An Advisory Action was mailed April 1, 2008 which failed to address the amendment to the claims. In view of this a Supplemental Advisory Action was sent on October 15, 2008 indicating that the amendment would be entered for purposes of appeal. As such, appellant is correct in that the Amendment of February 29, 2008 has been entered and claims 1-5, 7 and 8 canceled.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct. It is noted that the Final Rejection of December 10, 2007 incorrectly referred to the Laszlo as patent number 6,608,020, however, Appellant has correctly referred to the corrected patent number 4,608,020.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,608,020	LASZLO	8-1986
2,309,270	OPOTOW	1-1943
3,826,002	FAUST et al.	7-1974
5,188,529	LUTH	2-1993

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 6, 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Laszlo (4608020). Laszlo teaches a tooth 4 provided with sides at 31 and bottom as shown at the bottom of hollowed out portion 30, Figs. 2 and 3, and a resin filling, column 2, lines 39-42, which forms an occlusal surface. Laszlo shows in the figures that side walls 31 have an inverse hour glass shape, the expanded bottom of the shown walls will inherently provide an undercut. This shown undercut inherently provides a notch.

Claims 6, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laszlo (4608020). Laszlo teaches a tooth 4 provided with sides at 31 and bottom as shown at the bottom of hollowed out portion 30, Figs. 2 and 3, and a resin filling,

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column 2, lines 39-42, which forms an occlusal surface. Laszlo shows in the figures that the side walls 31 have an inverse hour glass shape, the expanded bottom the shown walls inherently provides an undercut. In view of the new terminology, "notch", the specific shape of the undercut is an obvious matter of choice in the shape of a known structure to one of ordinary skill in the art.

Claims 9, 11, 13, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Opotow (2309270) in view of Laszlo (4608020). Opotow shows a dental prosthesis 10 having teeth as shown, central bearing 12, removable attaching material 13. The shown central bearing is capable of being received in the mouth, page 2, column 1, lines 14-45, and is inherently capable of maintaining a spaced relationship. Opotow teaches the occlusion is adjusted, page 2, column 2, lines 7-25. The material 13 functions as an adhesive. Opotow does not show a tooth housing with a receptacle. Laszlo teaches a housing provided with sides at 31 and bottom as shown at the bottom of hollowed out portion 30, Figs. 2 and 3. It would be obvious to one of ordinary skill in the art to modify Opotow to include a tooth housing as shown by Laszlo in order to better obtain the desired occlusion by an art known alternative method. As to claims 11 and 13, Laszlo teaches using resin for filling. To use resin for the tooth housing also would be an obvious matter of choice in the use of well known materials for teeth to one of ordinary skill in the art. The specific adhesive used is an obvious matter of choice in known materials for attaching devices to the skilled artisan.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Laszlo (4608020) in view of Faust et al (3826002). Laszlo shows the structure described

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above, however, does not show a removable insert. Faust shows a removable insert, Figs. 11-13. It would be obvious to one of ordinary skill in the art to modify Laszlo to include an insert as shown by Faust as the claim language is a list of elements properly met by a list of elements in the prior art.

Claim 15 is are rejected under 35 U.S.C. 103(a) as being unpatentable over Opotow (2309270) in view of Laszlo (4608020) as applied to claim 9 above, and further in view of Faust et al (3826002). The above combination does not show a removable insert. Faust shows a removable insert, Figs. 11-13. It would be obvious to one of ordinary skill in the art to modify the above combination to include an insert as shown by Faust as the claim language is a list of elements properly met by a list of elements in the prior art.

Claim 17 is are rejected under 35 U.S.C. 103(a) as being unpatentable over Opotow (2309270) in view of Laszlo (4608020) as applied to claim 9 above, and further in view of Luth (5188529). Opotow further shows a bearing plate 31 and bearing pin 22, however, the above combination does not show a lock nut. Luth teaches using a lock nut 11B. It would be obvious to one of ordinary skill in the art to modify the above combination to include a lock nut as shown by Luth in order to lock the elements in position.

(10) Response to Argument

Rejection under 102(b) of claims 6, 10 and 12, Laszlo:

Appellant argues that Laszlo does not show the limitation of the tooth being provided with a bottom because the shown material 1 of Laszlo is a base plate of

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temporary wax and not a bottom of the tooth as claimed. This argument is disagreed with because it is not commensurate with the actual claim language which only claims the tooth has a bottom and does not limit the claim to the bottom being the same material as the sides. As such a wax bottom or the final plastic forming the bottom both meet the claim language.

Appellant argues that Laszlo does not show at least one undercut notch for retaining resin. That the hourglass shape of Laszlo is not an undercut notch as claimed, and further, that the notch must be a V-shape, slit or cut away. Appellant's argument is not agreed with because the present disclosure does not specifically define the terminology "notch", as such, it is proper to interpret this term in its broadest reasonable meaning, which in view of the present disclosure, is an undercut region that when filled will retain the filling material more securely. It is held that the show bottom of the hourglass shape of the Laszlo will inherently function as an undercut notch, and therefore, properly meets the claim language. The claims do not limit the specific shape of the notch to a V-shape, slit or cut away as argued.

Appellant argues that Laszlo does not show the limitation that the occlusal surface of the tooth has a contour conforming to and having been molded by interaction with opposing teeth. This argument is disagreed with because the difference being argued is related to the difference in the method of making the tooth between the present invention and Laszlo, the present invention fills a hollow pre-tooth with resin and before the resin hardens, shapes the resin by occluding the tooth with the opposing tooth to shape the occlusal surface forming the final tooth, while the method of the

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Laszlo reference fills a hollow pre-tooth with wax, shapes the wax against the opposing tooth and then melts the wax forming a cast in which is cast the final tooth. It is held that in an article claim, the claim language is properly met by a showing of the actual claimed final structure, regardless of the process used to obtain that structure. In this case the final structure of the tooth of Laszlo includes an occlusal surface shaped to match the opposing tooth, and therefore, meets the claim language.

Rejection under 103(a) of claims 6, 10 and 12, Laszlo:

Appellant refers to and repeats the arguments made above, and as such, these arguments have been responded to above.

Rejection under 103(a) of claim 14, Laszlo and Faust:

Appellant argues that this claim is allowable for the same reasons set forth above, and as such, this argument has been responded to above.

Rejection under 103(a) of claims 9, 11, 13, 16 and 18, Opotow and Laszlo:

Appellant argues that Laszlo fails to show the included limitations of the tooth for the same reasons as argued before, and as such, these arguments have been responded to above.

Appellant argues that Opotow, while showing a bearing device, fails to show the claimed tooth. It is agreed that Opotow does not show the claimed tooth, however, the rejection is based on a combination that does show the tooth features.

Appellant argues that the combination is untenable, that the rationale given is merely conclusory. This argument is disagreed with because Opotow clearly shows

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combining the bearing device with a tooth structure in order to better obtain the desired occlusion, therefore, properly suggesting the combination.

Rejection under 103(a) of claim 15, Opotow, Laszlo and Faust:

Appellant argues that this claim is allowable for the same reasons set forth above, and as such, this argument has been responded to above.

Rejection under 103(a) of claim 17, Opotow, Laszlo and Luth:

Appellant argues that this claim is allowable for the same reasons set forth above, and as such, this argument has been responded to above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/John J Wilson/
Primary Examiner
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